COMMONWEALTH OF PENNSYLVANIA
vs.
RALPH JOSEPH STRICKLER,
*Appellant*

IN THE SUPERIOR COURT OF PENNSYLVANIA
Pittsburgh District
No. 582
Pittsburgh, 1980

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COMMONWEALTH OF PENNSYLVANIA
vs.
GEORGE ALFRED STRICKLER, III,
*Appellant*

No. 586
Pittsburgh, 1980

APPEAL FROM THE JUDGMENT OF SENTENCE OF THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY, CRIMINAL DIVISION, AT NOS. 1520 AND 1521 OCTOBER TERM, 1978

BEFORE: BROSKY, DiSALLE and SHERTZ, JJ.

PER CURIAM: FILED: JUNE 12, 1981

Judgment of Sentence affirmed.

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| COMMONWEALTH OF PENNSYLVANIA<br>vs.<br>RALPH JOSEPH STRICKLER,<br>*Appellant* | IN THE SUPERIOR COURT OF PENNSYLVANIA<br>Pittsburgh District<br>**No. 582**<br>**Pittsburgh, 1980** |
| COMMONWEALTH OF PENNSYLVANIA<br>vs.<br>GEORGE ALFRED STRICKLER, III,<br>*Appellant* | **No. 586**<br>**Pittsburgh, 1980** |

APPEAL FROM THE JUDGMENT OF SENTENCE OF THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY, CRIMINAL DIVISION, AT NOS. 1520 AND 1521 OCTOBER TERM, 1978

BEFORE: BROSKY, DiSALLE and SHERTZ, JJ.

MEMORANDUM OPINION:

Appellants, George Alfred Strickler, III and Ralph Joseph Strickler, were convicted of burglary, receiving stolen property, conspiracy, and possession of controlled substances with intent to deliver. After the verdict of the non-jury trial was rendered and sentence imposed, appellants filed post-verdict motions which were denied. This appeal followed. We affirm.

The appellants seek our determination of two questions: first, whether the police had sufficient probable cause to arrest the appellants; and second, whether the arrest violated 42 Pa. C.S.A. §8901.

On September 21, 1978, the Thrift Drug Store on Route 22 in Murrysville, Westmoreland County, was broken into. An alarm sounded and guards at the nearby Beckwith Machinery Company witnessed events they surmised were related to the

break-in. One guard reported to the police that he saw a green "General Motors" or "Buick" automobile pass the drug store within minutes of the alarm sounding. The guard also indicated that he saw two persons, one wearing a red shirt and the other wearing dark clothing. The guard reported the direction in which the car traveled but did not indicate that he saw the vehicle leave the drug store parking lot. Rather, he saw it pass on the road in front of the store. The other guard never spoke to the police.

A policeman arrived at the store several minutes after the burglary occurred. Officer Andrew Patrick saw none of the events described to him. Patrick left the store area within a very short period of time and drove eastward. He eventually came upon a grey two tone Buick automobile. Patrick stopped the car to question the inhabitants. There were three men, one wearing a red shirt, one in dark clothing, and a third whose attire was not described. The officer observed several bottles in the car when he shone a flashlight into it in order to see the person inside. The bottles were discovered to contain drugs stolen from the Thrift Drug Store. The appellants were then arrested.

The appellants sought to have evidence suppressed at a pre-trial hearing at which they claimed the arrest was illegally made without probable cause. Their application was denied.

The standard for review of the suppression court's refusal to exclude evidence is well established:

> Our responsibility on review is "to determine whether the *record* supports the factual findings of the court below and the legitimacy of the inferences and legal conclusions drawn from those findings...." [citations omitted] In making this determination, this court will consider only the evidence of the prosecution's witnesses and so much of the evidence for the defense as, fairly read in the context of the record as a whole, remains uncontradicted.

*Commonwealth v. Kichline*, 468 Pa. 265, 280-81, 361 A.2d 282, 290 (1976).

"To be constitutionally valid, a warrantless arrest must be based on probable cause." *Commonwealth v. Bynum*, Pa. Super. , , 401 A.2d 776, 777 (1979). The Commonwealth has the burden of showing probable cause. *Commonwealth v. Bartlett*, Pa. , , 406 A.2d 340, 341 (1979); *Commonwealth v. Holton*, 432 Pa. 11, 14-15, 247 A.2d 228, 230 (1968). We view the record in its entirety and decide whether there was support for a finding or probable cause based upon all the facts the police knew when they made the arrest. *Commonwealth v. Roscioli*, 240 Pa. Super. 135, 138, 361 A.12d 834, 836 (1976).

In *Commonwealth v. Waters*, Pa. Super. , , 419 A.2d 612, 614 (1980), we said:

> Probable cause exists where, at the time of arrest, the facts and circumstances known to the police, or about which they have reasonably trustworthy information, are sufficient to warrant a person of reasonable caution in believing that the suspect has committed or is committing a crime. [citation omitted]

The existence of probable cause must be proven by the Commonwealth, but not "beyond a reasonable doubt." The circumstances are viewed through the "eyes of a trained officer" to determine whether probable cause existed, *Commonwealth v. Tolbert*, 235 Pa. Super. 227, 230, 341 A.2d 198, 200 (1975); *Commonwealth v. Devlin*, 221 Pa. Super. 175, 289 A.2d 237 (1972).

Alternatively, in *Commonwealth v. Kazior*, Pa. Super. , , 410 A.2d 822, 825 (1979), we said:

> The trial court was of the opinion that appellee's constitutional rights had been violated initially when the door of his vehicle was open and he was directed to get out of his car. Even if we were to accept the doubtful conclu-

sion that probable cause to arrest did not then exist, a limited invasion of appellee's privacy for the purpose of investigating possible criminal activity was constitutionally proper. *Adams v. Williams*, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972); *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *Commonwealth v. Shoatz*, 469 Pa. 545, 366 A.2d 1216 (1976). See also: *Commonwealth v. Benson*, 239 Pa. Super. 100, 361 A.2d 695 (1976); *Commonwealth v. Galadyna*, 248 Pa. Super. 226, 375 A.2d 69 (1977). "The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary...it may be the essence of good police work to adopt an intermediate response. A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time." *Adams v. Williams*, supra., 407 U.S. at 145-146, 92 S.Ct. at 1923, 32 L.Ed.2d at 616-617. After appellee had emerged from his vehicle, the police were not required to close their eyes to evidence which lay open to view on the interior of the car. Accordingly, we must reject the trial court's legal conclusion that the physical evidence found lying in the interior of appellee's car was the product of an unlawful search.

The record discloses that the guard who spoke with the police witnessed the events from some distance. He said:

Q. Did you recognize anything characteristic about them?
A. I noticed one of the figures was wearing a red shirt.
Q. From your point of view to where you were able to observe these people running from the area of the Thrift Drug to the lower end of the parking lot how far away is it?
A. About three hundred feet.

Furthermore, this view of the men was only very brief because the drug store building was illuminated but the parking lot area to which they presumably ran was not.

Q. What are the conditions of lighting in the area of the Thrift Drug parking lot?
A. They have like an overhang from one end of the building to the other end of the building and they have, I guess, they would be nightlights or security lights outside.
Q. Do they light the parking area?
A. No, they light the front of the store.

The guard observed an automobile pass in front of the drugstore. However, he did not observe any car leave the drugstore parking lot:

Q. Did you observe any motor vehicle?
A. I didn't observe no one leaving the lot. I observed one that was told to me about as it was going down the road. I didn't notice any leaving the lot.
Q. You say someone told you about one going down the road or did you see one going down the road?
A. I seen one.
Q. When did you see the vehicle going down the road?
A. While I was. . . I was still on the phone talking to the police.
Q. From what direction or what—from what area did that vehicle come?
A. It was—it was headed west.
Q. It was going west?
A. No, it was headed east. It was headed east.
Q. Well, now in your—say east. Towards what town would that be?
A. Going towards Murrysville.
Q. Towards Murraysville?
A. Towards Monroeville.
Q. Would that be west of Murrysville then?
A. I'm getting messed up here.

Q. So just so—from the point you were looking it would have been going; am I correct, to your left; is that what you're saying.
A. Yes.
Q. So that would be west; is that right?
A. Yes.
Q. Did you notice what kind of vehicle it was?
A. No, I didn't.
Q. Did you make a report to the police of the vehicle?
A. I told them what I was—told the the kind of vehicle it was, told them it was a General Motors car.

When the appellants were apprehended they were in a Buick automobile. It had a grey bottom and a black vinyl top. The arresting officer stated:

A. When I knew myself that this was a description of the vehicle that was given to me. Only at that time it wasn't like—it wasn't a green.
Q. What color was it?
A. It was a light gray.
Q. Light gray. And what kind of car was it?
A. It was a Buick. It had a light gray bottom and black vinyl top.
Q. And where was it that you stopped that vehicle?
A. Right under the traffic signal.
Q. When did you turn the emergency lights on?
A. After I observed that it was a General Motors car, a Buick.

Additionally, when the car was stopped it had three occupants not two as the guard described.

> At that time I also observed there was three occupants in the vehicle. The one occupant in the right front was wearing a red shirt and the one sitting in the back had dark clothing on.

This, however, is not unusual. The police quite reasonably have assumed a third person drove the car to pick up the men

from the scene of the crime. Furthermore, the police arrived at the drugstore within several minutes of the offense, at a late hour of the night, and the record discloses that no cars were seen passing in front of the drug store between the sighting of the car by the guard and the arrival of the police. Thus, the automobile driven by the burglars was unlikely to have been driven off of Route 22 down one of several which intersected it.

When the police eventually came upon the appellants' car, they found it was gray and not green. This difference was, however, understandable when we recognize that the automobile was viewed at a late hour, in poor light, and from a distance. Thus, while we do not hold that the police had probable cause to stop the appellant's vehicle, we find that the police were possessed of sufficient facts to create sufficient suspicion in the eyes of a trained police officer to justify an intermediate response of stopping the car to question the appellants. After the police made the stop, they saw that one appellant wore a red shirt and the other appellant dark clothing. Then, the incriminatory evidence in appellants' vehicle came within the plain view of the police. Clearly, at that time the police had ample probable cause to make an arrest. *Commonwealth v. Kazior*, supra.

Next, we turn to appellant's claim under 42 Pa. C.S.A. §8901. That section states:

> Any police officer of any political subdivision may arrest with or without warrant any person beyond the territorial limits of such political subdivision for a summary or other offense committed by such person within such political subdivision if the officer continues in pursuit of such person within such political subdivision if the officer continues in pursuit of such person after commission of the offense. The police officer shall exercise under this section only the power of arrest which he would have if he were acting within the territorial limits of his political subdivision.

Appellants claim 42 Pa. C.S.A. §8901 was violated because their arrest was made outside of the jurisdiction, Murrysville Borough, Westmoreland County, Pennsylvania, by a Murrysville policeman in Monroeville, Allegheny County, Pennsylvania.

In *Commonwealth v. Holderman,* Pa. Super. , , 425 A.2d 752 (1981), we held that 42 Pa. C.S.A. §8901 required that police be in fresh pursuit in order to make extraterritorial arrests. Such pursuit is often required when police engage in reasonable police activity to investigate a crime. Notably, a policeman may begin to chase, by automobile, a fleeing misdemeanant or felon and encounter him within a short distance and arrest him in a foreign jurisdiction.

The facts in the instant case indicate that the policeman saw the appellants' vehicle under circumstances where a reasonable police officer would become suspicious. He pursued the car out of Westmoreland County into Allegheny County and made an arrest. We have held that probable cause to arrest need not arise in the policeman's jurisdiction. It can arise in the foreign jurisdiction. *Commonwealth v. Robb*, 238 Pa. Super. 62, 352 A.2d 515 (1975), (interpreting 19 P.S. §11 which 42 Pa. C.S.A. §8901 reenacted in substantial part). Officer Patrick pursued the appellants' vehicle into a foreign jurisdiction. The pursuit was fresh and continuous and, therefore, clearly within the officer's power as provided in 42 Pa. C.S.A. §8901.

Accordingly, the police properly arrested the appellants. The judgment of sentence of the trial court is affirmed.

OFFICE OF PROTHONOTARY
THE SUPREME COURT OF PENNSYLVANIA
801 CITY-COUNTY BUILDING
PITTSBURGH, PA. 15219

Pittsburgh, Pa.
15219

Carl Rice, Esq.
Prothonotary
Irma T. Gardner
Deputy Prothonotary

March 9, 1982

James Irwin, Esquire
1706 Fifth Avenue
Arnold, Pennsylvania 15068

In Re: Ralph Joseph Strickler and George Alfred Strickler, III, Petitioners v. Commonwealth of Pennsylvania
No. 214 W. D. Misc. Docket, 1981

Dear Mr. Irwin:

The Court has entered the following Order on your Petition for allowance of appeal in the above-captioned matter:

"Petition for allowance of
appeal denied.
Per Curiam
3/2/82"

Very truly yours,

/s/ IRMA T. GARDNER
Irma T. Gardner
*Deputy Prothonotary*

ITG:bnl
cc: James Driscoll, Esquire
District Attorney's office
Courthouse
Greensburg, Pa. 15601

THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

801 CITY-COUNTY BUILDING
PITTSBURGH, PA.
15219

Carl Rice, Esq.
Prothonotary
Irma T. Gardner
Deputy Prothonotary

June 2, 1982

Paul Boas, Esquire
19th Floor, Law and Finance Bldg.
Pittsburgh, Pennsylvania 15219

In Re: Ralph Joseph Strickler and George Alfred Strickler, III, Petitioners v. Commonwealth of Pennsylvania
No. 214 W. D. Misc. Docket, 1981

Dear Mr. Boas:

The Court has entered the following Order on your Application for Reconsideration of Denial of Allowance of Appeal filed in the above-entitled matter:

"Application for Reconsideration of
Denial of Allowance of Appeal Denied.
Per Curiam
5/26/82"

Very truly yours,

/s/ CARL RICE, ESQ.
Carl Rice, Esq.
*Prothonotary*

CR:bnl
cc: James Driscoll, Esquire
District Attorney
Courthouse—Westmoreland County
Greensburg, Pa. 15601